

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2392 OF 2016

Vilas @ Babu Bhaguram Shirke

... Petitioner

Vs.

The State of Maharashtra.

... Respondent

Mr.Hitesh P. shah for the Petitioner

Mr.H.J. Dedia, APP, for Respondent - State

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: **AUGUST 2, 2016**

ORAL JUDGMENT (PER SMT. V.K. TAHILRAMANI, J.):

1. Heard both sides.
2. Rule. By consent, Rule is made returnable forthwith.
3. The petitioner is a life convict undergoing conviction and sentence under section 302 r/w section 149 of the Indian Penal Code for causing the death of Yasin. The petitioner has been categorised under 3(d) of the 1992 Guidelines. 3(d) states that a person will be released from imprisonment subject to undergoing 26 years imprisonment including remission. Category 3 deals with murders for other reasons and Category 3(d) is murder committed with pre-meditation and with exceptional violence or perversity.

4. The learned Counsel for the petitioner states that the petitioner has been wrongly categorised under Category 3(d) and the petitioner in fact should be placed under Category 3(b) i.e., where a murder is committed in the course of a quarrel by an individual or a gang where the person has no previous criminal history. If a person is categorised in the said category, he would have to undergo 24 years of imprisonment including remission. The learned Counsel for the petitioner submitted that the petitioner has completed 22 years of imprisonment including remission and if the petitioner is categorised in Category 3(b), the petitioner would be released in a few months.

5. In view of the contention raised by the learned Counsel for the petitioner, we have perused the facts and circumstances of this case including the judgment and order passed by the trial Court. The facts show that on 15.12.1995, at about 23.30 hours, the petitioner came out of the house of one Subhash keeping his hands around the shoulder of Yasin (deceased). The petitioner and Yasin were talking and were going towards Sulabh Shouchalay side. Co-accused Vitthal, Shiva, Krishna, Mohd. Ali, Nitin, Milind and Sandeep were standing near the Sulabh Shouchalay. When the petitioner and Yasin reached Sulabh Shouchalay, the petitioner removed his hand from the shoulder of Yasin and started abusing him. At that time, the co-accused Milind caught right hand of

Yasin. Co-accused Nitin caught head and hair of Yasin from behind. Then, the petitioner removed one sharp edged weapon from under his shirt and started giving blows on the stomach of Yasin. Co-accused Shiva took out sharp edged weapon which he had hidden on his person and gave blows with the said weapon to Yasin. Co-accused Vitthal, Mohd. Ali and Krishna also gave blows to Yasin with the weapons in their hands. Yasin was shouting for help. Thereafter, the petitioner and other accused ran away from the spot. From the facts, it appears that the petitioner had pre-planned that he would come to Sulabh Shauchalay with the deceased and there, he and the other accused would assault Yasin and finish him. The conduct of the petitioner clearly shows that there was pre-meditation. The petitioner has been categorised under Category 3(d) which deals with cases of murder committed with pre-meditation and with exceptional violence or perversity. It is seen that the deceased had sustained 19 injuries. Out of them, seven injuries were on the left side of the chest, three were on the abdomen. The injuries were such that intestinal coils were protruding out of the stomach of the deceased. In addition, there were seven incised wounds on the body of the deceased. Looking to the fact that there were 19 injuries on the body of the deceased and looking to the part of the body on which the injuries were found, i.e., seven injuries on the chest, three injuries on the abdomen, due to which the intestines protruded out of the stomach, it can be said that it is a case of exceptional

violence. Therefore, the petitioner has been rightly categorised under category 3(d). Thus, no case is made out for interference.

6. Rule is discharged.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)